



December 7, 2018

Michelle Carey
Chief, Media Bureau
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Written *Ex Parte* Communication, Electronic Delivery of MVPD Communications;
Modernization of Media Regulation Initiative, MB Docket Nos. 17-317, 17-105

Dear Ms. Carey:

At a meeting with Media Bureau staff in September, the National Association of Broadcasters (NAB) and NCTA – The Internet & Television Association (NCTA) discussed issues relating to the notice that TV broadcasters provide to cable operators as to their stations' elections between must carry or retransmission consent.¹ NAB and NCTA now have agreed on the details of a proposal discussed at that meeting to reform the current election notification process. We outline our proposal herein and urge the Commission to approve it.

Under the FCC's current rules, every commercial broadcast TV station must provide notice every three years, via certified mail, to each cable system and DBS carrier serving its market as to whether it is electing must carry or retransmission consent. As part of its rulemaking on electronic delivery of multichannel video programming distributor (MVPD) communications, the Commission sought comment on modernizing these rules, such as by eliminating the requirement to send election notices by certified mail and replacing it with a mechanism for providing notice of carriage elections online.²

¹ NCTA, Notice of *Ex Parte* Communication, MB Docket Nos. 17-317 & 17-105 (Sept. 17, 2018) (September *Ex Parte*).

² Notice of Proposed Rulemaking, MB Docket Nos. 17-317 & 17-105, FCC 17-168, at ¶¶ 25-27 (Dec. 14, 2017) (asking if the FCC could modernize its "rules in a way that would minimize the burden on broadcasters, ensure that MVPDs receive the elections in a timely way, and still provide a mechanism by which broadcasters can demonstrate that they met the election deadline with respect to specific operators and DBS carriers").

In an effort to bridge the gap between broadcasters and cable operators on the election notice issue, NAB and NCTA met with staff of the Media Bureau on September 13 and discussed a possible compromise proposal. Since that time, NAB and NCTA have continued to work to craft a proposal that would alleviate the burdens associated with the current notification process and meet the needs of both broadcasters and cable operators. We now reaffirm the compromise proposal previously discussed and provide further detail as to how our election notice approach would function.³

As set forth in the September *ex parte*, under our joint proposal, a commercial broadcast TV station would be required to send notice of its must carry or retransmission consent election to a cable operator *only if* the station changed its election status from its previous election. In those cases, the broadcaster would send its notice to an email address listed in the cable operator's online public file or in the FCC's Cable Operations and Licensing System (COALS) database, for cable operators that do not have an online public file. NAB and NCTA are not proposing to change the current default election provisions.⁴

NAB and NCTA envision this new framework taking effect in the 2020 election cycle. Beginning at that time, a TV broadcaster would provide notice via email to a cable operator only if the station is changing its carriage election. Commercial TV broadcasters would continue to include copies of their election statements in their online public files.⁵

Under this framework, certain updates to the FCC's online systems and databases would be needed. These updates would include:

- (1) *A new field in cable operators' online public files for carriage election contact information.* Cable operators should be required to provide a general carriage elections email address, where broadcasters will send their election notices, and a phone number for broadcasters to use in the event of questions as to whether cable operators received stations' election notices. A cable operator would include this email address and phone number on the first page of each of its public files.
- (2) *A new field in TV broadcasters' online public files for carriage election contact information.* Broadcasters would include an email address and phone number on the first page of each of their stations' public files.
- (3) *A new field in the COALS database.* Cable operators that do not have an online public file (e.g., cable TV systems with fewer than 1,000 subscribers) will need to provide the same contact information as described in (1) above (a carriage election email address and phone number). These cable operators would add an email address and phone number for each "Legal Name" in COALS, which the database currently

³ While NCTA represents cable operators and not all MVPDs, NAB believes these rules should apply uniformly to all MVPDs.

⁴ See 47 C.F.R. §§ 76.64(f)(3).

⁵ The broadcaster election rules would be satisfied so long as a broadcaster properly follows the procedures outlined herein. Failure to include an election notice in a broadcaster's public file would be governed by the Commission's rules and policies addressing omissions from the broadcast public file.

associates with operators' Physical System ID listings. NAB and NCTA encourage the Commission to update COALS so operators can simultaneously update multiple "Legal Names" with the same email and phone number, if needed.

It is important that carriage election contact information be kept current. If the cable system's contact information changes, operators with online public files will need to update the carriage election contact information in their public files. For small cable systems without an online public file, they will need to update their carriage election contact information in COALS. Because cable operators and systems are required to keep their public files and COALS data up-to-date, broadcasters should be able to satisfy their notice requirement if they rely on the contact information in the public files, or in COALS for systems with fewer than 1,000 subscribers. If a broadcaster is unable to contact an existing cable operator or system by email and then by using the phone number provided by the system or operator, then the broadcaster will only be required to copy the FCC's election notice email address described below and include any change of election notice for such provider in its online public file by the election notice deadline. In the same vein, if the broadcaster's contact information changes, broadcast stations will need to update the carriage election contact information in their public files.

Broadcasters should be able to assume that the contact information provided by cable operators in their online public files or in COALS is up-to-date within 60 days of the next carriage election deadline.

Additional questions may arise when a broadcaster gives email notice of a change in its carriage election, especially with regard to multi-system cable operators. A broadcaster will not need to identify each specific cable system for which a carriage election applies, just the Designated Market Area (DMA), if the broadcaster changes its election for all the systems of the cable operator. In such a case, a broadcaster would send a notice to the cable operator stating that "Station WXYZ now elects retransmission consent [or must carry] for all of the systems in X DMA." Broadcasters would need to identify specific cable systems for which a carriage election applies if the broadcaster changes its election for some systems of the cable operator but not all.⁶ In any notice changing its election, a broadcaster would need to

⁶ For instance, if Station Group X, whose stations all previously elected must carry, changes its election to retransmission consent for some but not all systems of a cable operator in a DMA, it can send a notice to the operator stating that "WXYZ in the New York, NY DMA is changing its election to retransmission consent on the following systems {identify specific systems} and maintains its election of must carry for the remainder of the systems in the DMA." The station group would not need to identify the systems in the New York DMA where it is remaining must carry. Similarly, if a station changes its election from retransmission consent to must carry, it must send a notice to the cable operator saying that "WXYZ in the New York, NY DMA is changing its election to must carry on the following systems {identify specific systems} and maintains its election of retransmission consent for the remainder of the systems in the DMA."

identify its station call sign(s), the DMA and the specific change being made in election status.⁷

Finally, to promote certainty for all parties, a way to confirm that cable operators received broadcasters' email notices of their changes in carriage election is essential. The Commission should have an email address that broadcasters will cc: when sending election notices to cable operators. While this will serve as a backup for broadcasters to show that they successfully completed proper notice, broadcasters may not use the FCC email address in lieu of sending an email to a cable operator at the operator's email address provided in its public file or COALS database (or following up with the point of contact if necessary).

In addition, a cable operator's email address should generate a response to the broadcaster's notification email so that the broadcaster knows its election notice was received. In the event the broadcaster does not receive that response, it should be able to call the cable operator's designated phone number to receive assistance and confirmation that the notice was received. However, an email from a cable operator confirming its receipt of an email from a broadcaster changing its election should not be considered the cable operator's affirmation that the broadcast station fully satisfied its notice obligation, as the notice could be defective in other ways. For their part, broadcasters should include an email address and phone number in the notices emailed to cable operators and, as discussed above, should include an email and phone number in their online public files, in case cable operators have additional questions.

NAB, NCTA and our members appreciate the FCC's continuing efforts in its media modernization proceedings. We believe the compromise detailed above will reduce burdens and provide certainty in the carriage election and notification processes and urge the Commission to adopt it.

Respectfully submitted,



Rick Kaplan
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⁷ NAB and NCTA discussed other specific situations and concluded that they should continue to be addressed in the same manner as today. For example, if a cable system is sold and a broadcaster has sent the cable operator a blanket election thinking that the election covers a system that the operator no longer owns, that situation will be treated as it is today. And if a broadcaster changes ownership, its election status and need to notify cable operators of its election in the next cycle will be treated in the same manner as today.



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cc: Holly Saurer
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